

IN THE COURT OF APPEALS 10/31/95
OF THE
STATE OF MISSISSIPPI
NO. 93-KA-01453 COA

LAMAR HICKMAN APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JOSEPH H. LOPER, JR.

COURT FROM WHICH APPEALED: WINSTON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

PEARSON LIDDELL, JR.

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: JEFFREY A. KLINGFUS

DISTRICT ATTORNEY: DOUG EVANS

NATURE OF THE CASE: CRIMINAL: ARSON

TRIAL COURT DISPOSITION: CONVICTED OF COUNT I: ARSON OF A DWELLING
HOUSE AND SENTENCED TO TWENTY (20) YEARS IN CUSTODY OF M.D.O.C. AS TO
COUNT I; AND COUNT II: ARSON OF PERSONAL PROPERTY AND SENTENCED TO

THREE (3) YEARS IN CUSTODY OF M.D.O.C. WITH THREE (3) YEARS SUSPENDED AS TO COUNT II.

BEFORE FRAISER, C.J., COLEMAN, AND SOUTHWICK, JJ.

PER CURIAM:

Lamar Hickman was tried and convicted of arson of a dwelling house and of personal property and was sentenced to twenty years in prison. He appeals his conviction claiming that the verdict of guilty was contrary to the overwhelming weight of the evidence and that his motion for new trial should therefore have been granted. We disagree and affirm.

The standard for reviewing an overruled motion for a new trial is well-settled. Motions for a new trial challenge the weight of the evidence. "New trial decisions rest in the sound discretion of the trial court, and the motion should not be granted except to prevent an unconscionable injustice." *McClain v. State*, 625 So. 2d 774, 781 (Miss. 1993) (citing *Wetz*, 503 So. 2d at 807-08). It is our task to consider all of the evidence in the light most favorable to the verdict. In doing so, we conclude that the evidence is not such that reasonable and fair-minded jurors could only find Hickman not guilty. *Id.* at 778.

The prosecution presented persuasive proof of guilt. The City of Louisville's Fire Chief testified that, on August 23, 1992, at 5:16 a.m., a fire was reported at 301 East Jefferson Street. In his expert opinion, the fire started in the carport. A lieutenant with the Louisville Police Department testified that he had found a witness, Howard Davis, who said that Hickman had been seen jumping a fence in the area of the fire a few minutes before it occurred with a container in his hand. Mr. Davis himself testified and noted that Hickman was headed in the direction of the Jefferson Street residence at the time he saw him. In addition, the lieutenant testified that a gas station a few blocks away from the Jefferson Street residence had sold gasoline to Hickman twice on the day of the fire -- once before the fire and once after the fire. The lieutenant testified that the fire was determined to be a "petroleum type fire" that was started inside the vehicle parked in the car port.

Hickman testified that he was working on his car and that he purchased the gasoline for that purpose. He denied having set fire to the Jefferson Street residence. He attacked the testimony of the state's eyewitness, contending that the witness was drunk and that it was too dark for an identification to be made. Moreover, Hickman testified that he had no motive to burn the residence.

We conclude that the jury's verdict of guilty was not contrary to the overwhelming weight of the evidence. The state presented testimony as to the cause of the fire, linked Hickman with the purchase of gasoline, and placed Hickman in the area of the residence at the time of the fire. The evidence offered by Hickman did not sufficiently undermine proof of guilt and we affirm.

THE JUDGMENT AND CONVICTION OF THE CIRCUIT COURT OF WINSTON COUNTY OF LAMAR HICKMAN OF COUNT I: ARSON OF A DWELLING HOUSE AND SENTENCE TO TWENTY (20) YEARS; AND COUNT II: ARSON OF PERSONAL

PROPERTY AND SENTENCE TO THREE (3) YEARS ALL IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH THREE (3) YEARS SUSPENDED AS TO COUNT II; AND TO PAY RESTITUTION OF \$5,900.00 IN COUNT I AND \$2,500.00 IN COUNT II IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO WINSTON COUNTY.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.